

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY**

RYAN HYSELL and CRYSTAL HYSELL,
on behalf of their daughter, A.H., a minor,

Plaintiffs,

v.

Civil Action No. 5:18-cv-01375

RALEIGH GENERAL HOSPITAL,
ALYCE PERKOWSKI, R.N.,
NURSE BELL, NURSE BUCHANON,
COMMUNITY HEALTH SYSTEMS, INC.,
d/b/a ACCESS HEALTH, DEBRA CROWDER, CNM,
and THE UNITED STATES OF AMERICA,

Defendants.

**MOTION OF DEFENDANT UNITED STATES OF
AMERICA TO DISMISS PLAINTIFFS' DEMAND FOR A JURY
TRIAL AGAINST THE UNITED STATES**

Pursuant to 28 U.S.C. §2402 and other applicable federal law, defendant United States of America ("United States")¹ moves to strike the plaintiffs' demand for a jury trial against the United States on the following grounds:

1. This civil action is a claim based on the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §2671, *et seq.*
2. The United States has not waived its sovereign immunity under the FTCA to the extent to entitle a plaintiff under the FTCA to a right to a jury trial.

¹ This motion also includes defendants Community Health Systems, Inc. d/b/a Access Health and Debra Crowder, CNM, as they have been deemed employees of the United States pursuant to the PHSA, 42 U.S.C. § 233 and the FTCA, 28 U.S.C. " 1346(b), 2401(b), and 2671 *et seq.* Therefore, any demand for a jury trial against them should also be denied for the same reasons as expressed in this motion. The United States should be substituted for defendants Community Health Systems, Inc. d/b/a Access Health and Debra Crowder, CNM, pursuant to 42 U.S.C. § 233 and the FTCA.

3. Congress has barred jury trials against the United States in FTCA cases pursuant to 28 U.S.C. § 2402.

4. The United States Supreme Court has specifically upheld 28 U.S.C. § 2402 and held that plaintiffs in FTCA actions are not entitled to jury trials. United States v. Neustadt, 366 U.S. 696, 701n.10 (1961) ("There is no right to a jury trial under the Tort Claims Act.") citing, 28 U.S.C. § 2402; Lehman v. Nakshian, 453 U.S. 156, 161 (1981) ("Finally, in tort actions against the United States, see 28 U.S.C. §1346(b), Congress has similarly provided that trials shall be to the court without a jury. 28 U.S.C. § 2402.") (footnote omitted); Carlson v. Green, 446 U.S. 14, 22 (1980) ("Third, a plaintiff cannot opt for a jury in an FTCA action, 28 U.S.C. § 2402").

Therefore, defendant United States respectfully requests that plaintiffs' demand for a jury trial asserted in the Complaint be stricken and denied inasmuch as the plaintiffs claim they are entitled to a jury trial against the United States and that defendant United States be granted such other and further relief as the court deems appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Fred B. Westfall, Jr., Assistant United States Attorney for the Southern District of West Virginia, hereby certify that on December 26, 2018, I electronically filed the foregoing **MOTION OF DEFENDANT UNITED STATES OF AMERICA TO DISMISS PLAINTIFFS' DEMAND FOR A JURY TRIAL AGAINST THE UNITED STATES** with the Clerk of the Court using the CM/ECF system which will send notification to the following CM/ECF participants:

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